



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

Paper No.

VIDAS, ARRETT & STEINKRAUS, P.A.
SUITE 400, 6640 SHADY OAK ROAD
EDEN PRAIRIE MN 55344

MAILED

MAY 04 2010

OFFICE OF PETITIONS

In re Patent No. 7,572,287	:	DECISION ON REQUEST
Johnathan S. Stinson	:	FOR
Issue Date: 08/11/2009	:	RECONSIDERATION OF
Application No. 10/037,036	:	PATENT TERM ADJUSTMENT
Filed: 10/25/2001	:	and
Atty Docket No.	:	NOTICE OF INTENT TO ISSUE
S63.2-9919-US01	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on September 9, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted, by two thousand one hundred twenty-two (2122) days. For the reasons stated below, the petition is treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted, by one thousand six hundred thirty-two (1632) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand six hundred thirty-two (1632) days is **GRANTED to the extent indicated herein.**

As to the "B" delay, the period is the period beginning on October 26, 2004, the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) and ending on August 11, 2009, the date the application issued as a patent, or 1751 days. See, 35 U.S.C. 154(b)(1)(C)(iii). Any time consumed by appellate review, however, is not included in the calculation of 37 CFR 1.702(b).

See 35 U.S.C. 154(b)(1)(B)(ii). On December 21, 2004, a notice of appeal was filed. On March 3, 2006, 439 days after the date the notice of appeal was filed, an Office action was mailed. On September 12, 2007, a notice of appeal was filed. On June 30, 2008, 293 days after the date the notice of appeal was filed, an Office action was mailed. On September 16, 2008, a notice of appeal was filed. On October 3, 2008, 18 days after the date the notice of appeal was filed, a notice of allowance was mailed. Accordingly, the excluded period for appeal is 750 (439 + 293 + 18) days, and the "B" delay period is 1001 (1751 - 750) days.

Further, the 109 days between the day after the date four months after the date of filing of the appeal brief filed on November 13, 2007, and the mailing of the Office action mailed on June 30, 2008, and the 110 days between the day after the date four months after the date the issue fee was paid on December 23, 2008, and the issuance of the patent on August 11, 2009, overlap with the 1001 days.

Thus, the non-overlapping period is 782 (1001 - 109 - 110) days. Therefore, the total "B" adjustment is 782 days.

The patent term adjustment at the time of issuance of the patent is 1632 (883 (400 + 4 + 260 + 109 + 110) days of Office delay + 782 days of over three years delay - 33 days of applicant delay) days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand six hundred thirty-two (**1632**) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the printed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,572,287 B2

DATED : August 11, 2009

DRAFT

INVENTOR(S) : Stinson

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 1718 days.

Delete the phrase "by 1718 days" and insert – by 1632 days--